

Objection Deadline and Time: January 31, 2019 at 4:00 p.m. ET
Hearing Date and Time: February 4, 2019 at 10:00 a.m. ET

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

SEARS HOLDINGS CORPORATION, et al.,

Debtors.

CHAPTER 11

CASE NO. 18-23538-RDD

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF CIVF V-OH1M03, LLC
TO THE ASSUMPTION AND ASSIGNMENT OF LEASES IN
CONNECTION WITH THE GLOBAL ASSET SALE TRANSACTION**

CIVF V-OH1M03, LLC ("Cabot"), by its undersigned counsel, hereby files this limited objection and reservation of rights (the "Reservation of Rights") to the above-captioned debtors' (the "Debtors"): (i) Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (Docket No. 1731) (the "Notice"); and (ii) Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contract and Unexpired Leases in Connection with Global Sale Transaction (Docket No. 1774) (the "Supplemental Notice"). In support of this Reservation of Rights, Cabot respectfully states:

BACKGROUND

1. On October 15, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United State Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York.

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Debtor, Innovel Solutions, Inc., leases certain real property located at 1615-1621 Georgesville Rd., Columbus, Ohio (the “Property”), from Cabot pursuant to a Lease Agreement dated as of December 18, 2001, as amended by the First Amendment to Lease dated as of June 22, 2006, as supplemented by the Notice of Extension of Lease dated June 1, 2009, as amended by the Second Amendment to Lease dated as of March 30, 2010, and as amended by the Third Amendment to Lease dated as of April 18, 2018 (collectively, the “Lease”).

4. On November 1, 2018, the Debtors filed their Motion for Approval of Global Budding Procedures (Docket No. 429) (the “Sale Motion”) seeking, among other things, approval of procedures to market, auction, and sell the Debtors’ real estate and other assets as a going concern (the “Proposed Sale”).

5. On November 19, 2018, this Court entered the *Order Approving Global Bidding Procedures and Granting Related Relief* (Docket No. 816) (the “Sale Procedures Order”) which, among other things, approved the Sale Motion.

6. On information and belief, on January 14, 2019, the Debtors commenced an auction for the sale of the Global Assets (the “Auction”) whereby the Debtors selected an offer by Transform Holdco, LLC (the “Proposed Buyer”), established by ESL Investments, Inc., as the highest and/or best offer for all or substantially all of the Global Assets.

7. In connection with the Sale Procedures Order, on January 18, 2019, the Debtors filed the *Notice of Successful Bidder and Sale Hearing* (Docket No. 1730) (the “Notice of Successful Bidder”) stating that the Proposed Buyer was the highest or best offer for all or substantially all of the Global Assets.

8. On January 18, 2019, the Debtors filed the First Notice, and on January 23, 2019, the Debtors filed the Supplemental Notice. The First Notice and Supplemental Notice identify certain executory contracts and unexpired leases that the Debtors might assume and assign as part of the Proposed Sale, including the

Lease identified on the Supplemental Notice as follows:

343	8712	INNOVEL SOLUTIONS, INC.	CABOT PROPERTIES	MASTER LEASE	12/31/2021	S8712-48-H	\$	24,442.47
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9. The Supplemental Notice proposes \$24,442.47 as the amount necessary to cure all monetary defaults under the Lease (the “Stated Cure Amount”).

RESERVATION OF RIGHTS

10. It is unclear what the Stated Cure Amount represents. Cabot’s books and records reflect that current amount to bring the Lease current through January 2019 is \$12,769.97 (the “Cure Amount”), not including any attorney fees and costs allowed under the terms of the Lease. A summary of these amount is attached as Exhibit A.

11. This amount may increase prior to any actual date of assumption and assignment of the Lease if the Debtors, the Proposed Buyer, or any applicable assignee do not pay all amounts that accrue and become due and owing under the Lease after the date of this Reservation of Rights, and any interest or other amounts that may come due, pursuant to the terms of the Lease and regardless of when those amounts accrued.

12. Cabot expressly reserves its right to amend or supplement the Cure Amount from time to time and at any time, and requests that the Debtors remain liable for, among other things: (a) post-petition charges or interest due under the Lease; (b) any non-monetary defaults; and/or (c) insurance and indemnification obligations under the Lease.

13. In addition, Cabot requests that any order approving the assumption and assignment of the Lease provides that any assignee will be responsible for all accrued, but unbilled charges under the Lease, including unpaid interest, whether accruing prior to or after the effective date of assumption and/or assignment of the Lease, when such charges become due in accordance with the terms of the Lease. This result is mandated by the requirement that the Debtors cure all arrears and that the Debtors provide adequate assurance of future performance under the terms of the Lease. *See* 11 U.S.C. § 365(b)(1).

14. Any assumption and/or assignment of the Lease should be conditioned upon, among other things, full compliance with section 365 of the Bankruptcy Code, including, but not limited to, the payment to

Cabot of all amounts due and owing under the Lease through the effective date of assumption and assignment of the Lease, and the provision by the Debtors and/or the proposed assignee of sufficient adequate assurance of future performance information.

15. Nothing in this Reservation of Rights is intended to be, or should be construed as, a waiver by Cabot of any of its rights under any of the Lease, the Bankruptcy Code, or applicable law. Cabot expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Reservation of Rights and to assert any additional objections with respect to the cure amount and any proposed assignment of the Lease on any and all grounds; (b) amend the Cure Amount; (c) assert any nonmonetary defaults under the Lease; (d) assert any rights for indemnification or contribution against the Debtors arising under the Lease; (e) object to any proposed assignee's adequate assurance of future performance; and (f) assert any further objections as it deems necessary or appropriate.

JOINDER IN OBJECTION OF SIMILARLY SITUATED PARTIES

16. To the extent not inconsistent with this Objection, Cabot joins in the objections of other landlords and contract counterparties to the Debtors' proposed assumption or assumption and assignment of leases.

Dated: January 31, 2019
Cincinnati, Ohio

Respectfully submitted,

/s/ Casey Cantrell Swartz

Casey Cantrell Swartz, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2019, a copy of the foregoing was served (i) via the Court's CM/ECF system upon all parties requesting electronic notice of all filings in this case; and (ii) the following parties in the manner indicated.

/s/ Casey Cantrell Swartz

Casey Cantrell Swartz

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